

EXHIBIT 21

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

OWENS CORNING, et al.,

Debtors.

**CHAPTER 11
Case Nos. 00-3837 to 3854 (JFK)
(Jointly Administered)**

**WITNESS:
Dr. Joseph Gitlin**

**DATE:
December 17, 2004**

**LOCATION:
Washington, DC**

**TAKEN BY:
Caplin & Drysdale**

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1 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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In re:

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Chapter 11

OWENS CORNING, et al.,

5

Debtors.

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Case Nos. 00-3837 to 3854 (JPF)

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14 DEPOSITION OF: Dr. Joseph N. Gitlin

15 DATE: December 17, 2004

16 LOCATION: Washington, DC

17 LEAD: Caplin & Drysdale

18 REPORTER: Susan Ashe, RMR, CRR

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1 Dr. Henry.

2 Do you know whether Dr. Henry
3 typically testifies for asbestos defendants?

4 A I don't know.

5 Q You're familiar with the concept of
6 "interobserver variability"; correct?

7 A Yes.

8 Q And what does that mean?

9 A That is very common, to find that
10 qualified physicians tend to differ in
11 interpreting -- and I'll use the term "films."

12 There is whole other science
13 here when we get into digital; but we'll talk
14 about "films."

15 They tend to differ in their
16 interpretation of abnormalities -- either
17 false-positives or false-negatives, whichever
18 way you want to look at it.

19 And in general, in science as
20 well as the art of medical imaging
21 interpretation, there is a difference of about
22 20 percent.

23 Q In your 2002 deposition, you said
24 that radiology is an art, not a science, and
25 there is variation in the view of the reader in

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1 almost any examination that's looked at.

2 Do you still agree with that
3 statement?

4 A Yes.

5 Q Are you familiar with the work by
6 Ducatman, et al. --

7 A Yes.

8 Q -- that examined the B-reader
9 intervariability in the context of examinations
10 for the U.S. Navy?

11 A Yes.

12 MR. FINCH: Let's mark this as
13 the next exhibit.

14 (Whereupon, Gitlin Deposition
15 Exhibit No. 6 was marked for
16 identification.)

17 THE WITNESS: It's labeled
18 "August 1988," by the way.

19 BY MR. FINCH:

20 Q You do have Gitlin Exhibit 6 in
21 front of you, Dr. Gitlin?

22 A Yes.

23 Q This is an August 1988 publication
24 by Dr. Alan Ducatman and others, entitled
25 "'B-Readers' and Asbestos Medical Surveillance."

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1 form.

2 A It's a hypothetical possibility.

3 Q Which you have not investigated;
4 correct?

5 A Correct.

6 Q Just to sort of break it down in
7 laymen's terms: You would agree with me, would
8 you not, that if you went to a podiatrist's
9 office you'd likely find a higher percentage of
10 people in the waiting room who are complaining
11 of sore feet than you would of people walking
12 around on the street?

13 A Logically, yes.

14 Q And so, would you agree with me that
15 the same sort of phenomenon can occur in
16 asbestos litigation -- meaning that a much
17 greater percentage of persons who file claims
18 actually have asbestos-related disease than what
19 you would expect from the total screened
20 exposure population?

21 A Logically, yes.

22 Q Have you done any kind of study to
23 determine whether doctors who often testify for
24 asbestos defendants engage in a systematic
25 underreading of X-rays?

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1 that were submitted, the initial B-readers for
2 all of them are -- I mean, the initial readers
3 for all them were done by B-readers?

4 A Oh, yes.

5 Q So you're not saying that those
6 roughly 30 B-readers were not qualified or
7 incompetent, are you?

8 A Oh, no.

9 Q And of the 30 B-readers, seven of
10 them read more than 35 X-rays; is that right?

11 A Correct.

12 Q Do you know if any court has
13 precluded any of the seven from testifying in an
14 asbestos personal injury case, on the ground
15 that they are incompetent or their testimony is
16 unreliable?

17 A I don't know of any instance.

18 Q After you had gotten the 551 films,
19 you -- there were some that you couldn't use for
20 some reason; is that right?

21 A Right.

22 Q And so, you got down to the 492?

23 A Right.

24 Q Of the 492 individual claimants, do
25 you know how many of that 492 at least one of

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1 And then there were two
2 consultants, 1/0 or greater, in nine cases. And
3 so on.

4 Q But --

5 A Now, in the extreme case, which may
6 make it clearly understood, if you go to the
7 column headed "6" --

8 MR. WELDON: What page are we
9 on again?

10 THE WITNESS: On 851 of the
11 published report.

12 A -- there was one instance where all
13 six consultant readers said that there was 1/0
14 or greater.

15 So in addition to the initial
16 reader that also said 1/0 or greater, all six
17 consultants said yes.

18 Q I still don't think that answers my
19 question, or maybe I just don't understand the
20 answer.

21 Are you saying that if you sum
22 up the column headed "1" on Table 4b on page
23 851, that will tell you how many of the 492
24 claimants -- at least one of the consultant
25 B-readers believed that they had a 1/0 or

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1 greater ILO rating? Or is it some other
2 calculation to do that?

3 A That calculation will do it, and
4 there is another way of doing it.

5 From -- no. I can't do it
6 from this table here.

7 Q Okay. So is it correct that 39 out
8 of the 492, one of the consultant B-readers
9 concluded they had a 1/0 or greater?

10 A Yes.

11 Q All right. What is a "kappa
12 statistic"?

13 A It's a measure of agreement between
14 one or more individuals on determining the value
15 of a parameter in a statistical analysis.

16 Q Would you agree that a kappa
17 statistic of greater than .75 indicates a high
18 level of agreement?

19 A Yes.

20 Q And a kappa statistic of 1.0, for
21 example, would mean an almost perfect agreement;
22 correct?

23 A Yes. By definition, 1.0 is perfect.

24 Q A kappa statistic of .40 to .75
25 would indicate fair agreement?

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1 do it this way:

2 Going back to your article,
3 which is in Gitlin 1, at various places you talk
4 about kappa statistics -- first, the kappa
5 statistic measuring the agreement among the six
6 consultant readings.

7 A Right.

8 Q And then the kappa statistic when
9 you add in the initial B-readers; correct?

10 A Correct.

11 Q Okay. For example, on page 849 of
12 the article --

13 A I've got it.

14 Q -- in the second column, first full
15 paragraph, you write: "The kappa statistic
16 assessing agreement among the six consultant
17 readers was .10 with a 95% confidence interval
18 of .07-.12."

19 This is the kappa statistic
20 for film quality; is that correct?

21 A This is -- Table 1d -- as usual, I
22 have to go back two pages to find 1d, I think.

23 1d is "...Chest X-ray Film
24 Quality," yes.

25 Q So what this shows is that the

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1 consultant B-readers have pretty poor agreement
2 among themselves as to film quality; correct?

3 A Yes.

4 Q And then when you add the initial
5 B-readers to that, it doesn't really change the
6 agreement or lack of agreement that much;
7 correct?

8 A Correct.

9 Q The next parameter that you measure
10 after the film quality is the question: Is the
11 X-ray film completely negative?

12 A Correct.

13 Q And there the consultant B-readers
14 have a kappa statistic of .43; is that right?

15 I'm reading on page 850 your
16 article.

17 A I'm trying to find that, that
18 number.

19 That's Table 2d; and on kappa
20 statistics -- well, it's .- -- yeah .43.

21 Q Which, I guess, is on the low end of
22 fair agreement; correct?

23 A Yes, yes.

24 Q And then when you add the initial
25 readers to that, the kappa statistic drops to

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1 Q So there was a fair agreement
2 between the initial B-readers and the consultant
3 B-readers on the question of whether there were
4 pleural abnormalities consistent with
5 pneumoconiosis; is that right?

6 A Right.

7 Q Okay. On the last page -- not the
8 last page, it's page 853, under the "Discussion"
9 section --

10 A Right.

11 Q -- the second paragraph, the second
12 sentence, you state:

13 "The authors had no basis for
14 determining how this group of workers
15 represented the universe of asbestos claimants."

16 Do you see that?

17 A Yes.

18 Q Do you still agree with that
19 statement?

20 A Yes.

21 Q So you don't know how representative
22 this group of asbestos claimants is, compared to
23 the hundreds of thousands of asbestos claimants
24 as a whole?

25 A That's correct.

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1 College of Radiology. And he feels their
2 responses were quite honest.

10 And so, there is a range of
11 association here.

12 Q Do you know if he asked any of them
13 to provide prior depositions where they were
14 questioned under oath about --

15 A Yes.

16 Q -- who they worked for?

17 A He did not.

18 Q He did not.

19 And I

20 that either; correct?

21 A Correct.

22 Q And so, do you know which, if any,
23 of these seven consultant B-readers is a
24 consultant for plaintiffs in asbestos
25 litigation?

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1 A I don't know.
2 I know the one, according to
3 Otha's conversation said, "I have a reputation
4 for..."

5 Q Was it Dr. Fraser; correct?
6 A I honestly don't know, but it could
7 be.

8 Q All right.

9 A In fact, that's a very interesting
10 question, which, when I looked at my own table
11 here before -- this Gitlin 9 -- I still can't
12 tell you, because of the codes we gave these
13 people, that "C1" is who and "C2" is who, by
14 name, because of my intent not to know that in
15 doing all this analysis.

16 So for a moment there when you
17 asked that question, I might go look at Fraser
18 and see what his percentage of positives were;
19 but I don't know which one he is.

20 Q Okay. So is it fair to say, you
21 relied on Mr. Linton to do the vetting to
22 determine whether or not any of these seven
23 consultant B-readers were people who principally
24 consulted for defendants in asbestos litigation
25 or not?

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1 A For defendants or for plaintiffs?

2 Q Yes.

3 A I relied on his personal
4 information, yes.

5 Q Okay. And you know that he did not
6 ask any of them for prior depositions or trial
7 testimony, where they were under oath and
8 responded to questions about who they had worked
9 for in asbestos litigation?

10 A Yes. He did not ask -- this was on
11 a very professional and very long-term personal
12 basis.

13 He was quite confident he got
14 straight answers. In fact that was part, as I
15 mentioned earlier, of our agreement with the
16 consultants -- that they would be anonymous,
17 insofar as we had the power to keep them
18 anonymous -- and then at some point, we had to
19 respond and put it in writing -- and also, that
20 they agreed to be totally blind to all the key
21 elements of litigation. They didn't want to
22 know about it, and they didn't.

23 Q Okay. In paragraph 6 of your
24 supplement report, you --

25 A That's Gitlin 2.

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1 made by Dave Setter; and the way this is
2 written, we did receive, in many cases, boxes
3 directly from the providers of those films.

4 So that is the way I interpret
5 that sentence right now.

6 Q Okay. So is it correct that
7 Mr. Setter was the lawyer who arranged for all
8 of the X-rays that were sent to Mr. Linton and
9 you to be sent?

10 A In these seven groups, yes.

11 Q Yes. And these seven groups
12 comprised the 492 cases or X-rays that your six
13 consultant B-readers reviewed; right?

14 A Well, more than that; but there
15 ended up being 492 suitable for analysis and
16 publication, yes.

17 Q Okay. And Mr. Setter was the lawyer
18 responsible for arranging for the X-rays that
19 got to be delivered to you and Mr. Linton; is
20 that right?

21 A And the reports.

22 Q And the reports.

23 A Often separately, but both were
24 essential.

25 Q Okay. For the Mississippi Holder

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1 group, you got 30 plaintiffs' films and B-reads;
2 right?

3 A Right.

4 Q This talks about a case called the
5 "Estate of Charles Holder, et al. v.
6 Westinghouse Electric Company..." in Jones
7 County, Mississippi.

8 Do you know how many X-rays
9 Mr. Setter or the lawyers that were working with
10 him had access to in addition to the 30 films
11 that they sent to you?

12 A No; but I've assumed all along
13 that -- and the statement that was made here,
14 that nobody made any cuts -- I'm sorry, I can't
15 find it now in the paragraph -- oh, there it is,
16 the last sentence: We were informed that the
17 attorneys made no cut of the films produced or
18 the -- "forwarded them, 'as is,' to Mr. Linton"
19 for reading.

20 Q Well, do you understand one way or
21 the other as to whether Mr. Setter or the other
22 attorneys working with him had the ability to
23 obtain X-rays for more than 30 plaintiffs
24 involved in the Mississippi litigation?

25 A I have no knowledge of that.

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1 Q So, they could have. You just don't
2 know?

3 A Right.

4 Q And you don't know, if they had
5 access to more X-rays, what selection criteria
6 they used to send the 30 films to you?

7 A That's correct.

8 But I do know that Dave Setter
9 made the statement that's here: The attorneys
10 made no cuts of the films produced or the
11 B-readers' initial reads, and forwarded them to
12 us "'as is.'"

13 He went to great lengths to be
14 very specific about that.

15 Q Well, it says here he made no cut of
16 the films produced in the Estate of Charles
17 Holder v. Westinghouse litigation.

18 My question is: How do you
19 know whether or not there were other X-ray films
20 in other litigation in Mississippi that
21 Mr. Setter had access to?

22 A I don't know.

23 Q Okay. So, he could have selected
24 one case and pulled all of the X-rays available
25 for that case. And then it would be true that

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1 he made no cut of the films from that case;
2 correct?

3 A Correct.

4 Q And then he could have had access to
5 a lot of other X-ray films from other cases,
6 that he didn't send you; right?

7 A Well, yes, obviously.

8 Q So you don't know the universe of
9 X-rays which Mr. Setter had access to?

10 A And that's my favorite word -- I
11 don't know anything about the "universe," and it
12 is driving me up the wall.

13 Q Would that same statement hold true
14 for all of these groups of cases, "AA" through
15 "AG"?

16 You don't know the universe of
17 cases which the defense lawyers had access to
18 before sending you X-rays?

19 A That is absolutely correct.

20 However, in every case where I
21 was informed or Otha Linton was informed that no
22 cuts were made, we included that in the
23 paragraph. And I'm not sure I can find another
24 one now, but I'm sure it's here in a couple of
25 cases.

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1 But, you're right. We have no
2 knowledge of what the real universe was of
3 workers exposed to asbestos, who are potential
4 claimants, as I define the "universe."

5 Q You have no knowledge of the
6 universe of X-rays that the defense lawyers had
7 access to, above and beyond just the exposed
8 worker population; correct?

9 A No knowledge whatsoever.

10 Q All right. And because of that, you
11 can't say how representative the results of this
12 study are of asbestos claimants, generally; is
13 that right?

14 A Yes. But I have learned something
15 since the paper was published.

16 Q We'll get to that in a moment.

17 A I phrased that, just so you could
18 maybe allow it later.

19 Q What have you learned since this
20 paper was published that you were referring to
21 in your last answer?

22 A You mentioned earlier that you noted
23 that seven of our initial readers provided a
24 substantial number of the NIOSH forms in our
25 492.

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1 defensible estimate.

2 Q Of the prevalence, the current
3 prevalence of asbestos-related diseases;
4 correct?

5 A And incidence.

6 Q The next sentence in paragraph 6,
7 you write:

8 "We could not and did not make
9 any claim that films and reports in our survey
10 are representative of the claimant universe."

11 Do you still agree with that
12 statement?

13 A That's true.

14 Q You don't have any belief or basis
15 for knowing whether the 492 claimants you
16 examined are representative of the claimant
17 universe as a whole; is that correct?

18 A Right. We have no basis for making
19 such a claim.

20 Q Okay. Turning to Gitlin 12 --

21 A Aha.

22 Q -- what is Gitlin Exhibit 12, sir?

23 A The first page refers to the
24 "Academic Radiology" publication, December 2004,
25 letters to the editor; and the -- I guess the

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1 forms and films -- to the attorneys who provided
2 the raw material for the study.

3 And when you start off with
4 something close to 100 percent positive, which
5 is expected in litigation, the claims are --
6 well, they better be based on positive findings,
7 whether they're right or wrong.

8 Then there's -- that's what
9 you test against, independent readings.

10 Q At the bottom of the page, Ducatman
11 writes:

12 "The solution attributed to me
13 by Gitlin and colleagues (1) of multiple
14 readings, is likely to be an improvement; if
15 used alone, however, it will lead to
16 under-reading for several statistical reasons."

17 Do you agree with
18 Dr. Ducatman's conclusion that use of multiple
19 readings to determine presence of extra changes
20 caused by exposure to asbestos would lead to
21 underreading?

22 A I question it, and I would subject
23 it to scientific investigation.

24 Q So you don't have a strong opinion,
25 one way or the other, as you sit here right now;